

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
)  
) CASE NO.: 1:16-CR-237  
)  
VS. )  
)  
ROBERT J. SEIFERT, )  
Defendant. )  
\_\_\_\_\_ )

**TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HON. MAE A. D'AGOSTINO  
THURSDAY, AUGUST 3, 2017  
ALBANY, NEW YORK**

**FOR THE GOVERNMENT:**

Office of the United States Attorney  
By: Edward P. Grogan, AUSA  
445 Broadway, Room 218  
Albany, NY 12207

**FOR THE DEFENDANT:**

Smith, Hernandez Law Firm  
By: Julio Hernandez, III, Esq.  
21 Everett Road Extension  
Albany, New York 12205

**THERESA J. CASAL, RPR, CRR, CSR**  
Federal Official Court Reporter  
445 Broadway, Room 509  
Albany, New York 12207

**THERESA J. CASAL, RPR, CRR**  
**UNITED STATES DISTRICT COURT - NDNY**

**USA v. Seifert - 16-CR-237**

1 (Court commenced at 10:01 AM.)

2 THE CLERK: Today is Thursday, August 3, 2017.  
3 The time is 10:01 AM. The case is United States of America  
4 versus Robert J. Seifert, case number 16-CR-237. We're here  
5 today for a sentencing. May we have appearances for the  
6 record, please.

7 MR. GROGAN: Ed Grogan, standing in for Michael  
8 Barnett, for the United States. Good morning, your Honor.

9 THE COURT: Good morning.

10 MR. HERNANDEZ: Julio Hernandez, on behalf of  
11 Robert Seifert, your Honor, to my right.

12 THE COURT: Good morning to both of you.

13 THE DEFENDANT: Hi.

14 THE COURT: Do both counsel have the final  
15 presentence report dated May 23, 2017, and the addendum  
16 dated August 1, 2017?

17 MR. GROGAN: The Government does, yes, your Honor.

18 MR. HERNANDEZ: Defense does, your Honor.

19 THE COURT: And Mr. Hernandez, have you shared  
20 these reports with the defendant?

21 MR. HERNANDEZ: I have, your Honor. I was here  
22 earlier this morning reviewing the updated final report with  
23 Mr. Seifert.

24 THE COURT: Thank you. Does the Government have  
25 any objection to the facts, the offense level calculation or

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1 the criminal history as set forth in the presentence  
2 investigation report?

3 MR. GROGAN: No objection, your Honor.

4 THE COURT: Does the defense have any objection to  
5 the facts, the offense level calculation or the criminal  
6 history as set forth in the PSI?

7 MR. HERNANDEZ: No, your Honor.

8 THE COURT: Thank you. Mr. Grogan -- well, I  
9 should say, before I turn to you, the record should reflect  
10 that I've carefully reviewed all of the materials that have  
11 been submitted, including both the final presentence report  
12 and the addendum and the submissions of counsel and the plea  
13 agreement, and I've read those all very carefully.

14 Does the Government wish to say anything before I  
15 impose sentence?

16 MR. GROGAN: The Government rests on its  
17 sentencing submissions, your Honor.

18 THE COURT: Mr. Hernandez, do you wish to say  
19 anything before I impose sentence?

20 MR. HERNANDEZ: No, your Honor, other than that we  
21 thank the Court for expediting sentencing this morning.

22 THE COURT: You're very welcome. Mr. Seifert, do  
23 you want to say anything to the Court before I impose  
24 sentence? You may, but you're not required to.

25 THE DEFENDANT: Yes. I'd like to thank the Court.

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1 I'm very grateful for the way things turned out, ma'am.

2 THE COURT: All right. Thank you. As I said a  
3 moment ago, I have reviewed and considered all pertinent  
4 information, including, but not limited to, the presentence  
5 investigation report, the addendum, the plea agreement,  
6 submissions by counsel, the 2016 edition of the Sentencing  
7 Guidelines manual and the factors outlined in 18 United  
8 States Code, Section 3553. I adopt the factual information  
9 and the guideline applications contained in the presentence  
10 investigation report.

11 The Court finds the total offense level is 19, the  
12 criminal history category is VI, and the guideline  
13 imprisonment range is 63 to 78 months. However, the  
14 statutorily authorized maximum sentence of five years is  
15 less than the minimum of the guideline range. Therefore,  
16 the guideline range is 60 months, pursuant to  
17 Section 5G1.1(a) of the Guidelines.

18 Pursuant to Rule 11(c)(1)(C), binding plea  
19 agreement, the parties agree that a sentence of time served  
20 at the time of sentencing, a term of supervised release of  
21 three years and a special assessment of \$100 is an  
22 appropriate disposition in this case. The parties further  
23 agree that to the extent the agreed-upon disposition departs  
24 from the applicable Sentencing Guidelines range, that  
25 departure could be made for justifiable reasons under

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1 Section 6B1.2(c)(2) of the Sentencing Guidelines. In  
2 particular, the specified sentence is reasonable and  
3 appropriate under the unique combination of facts and  
4 circumstances related to the defendant, the offense of  
5 conviction, related relevant conduct.

6 Therefore, upon your plea of guilty to Count III  
7 of the indictment, it is the judgment of the Court that you  
8 are hereby committed to the custody of the Bureau of Prisons  
9 to be imprisoned for a term of time served. I note that you  
10 have been in custody continuously since July 14, 2016.

11 Upon your release from imprisonment, you will be  
12 placed on supervised release for a term of three years.  
13 While on supervised release, you shall not commit another  
14 federal, state or local crime, you shall comply with the  
15 standard conditions that have been adopted by this Court.  
16 The Court finds that based upon the nature of the instant  
17 offense, as well as the history and characteristics of the  
18 defendant, as outlined in detail in the presentence report,  
19 as well as to provide rehabilitation services, the following  
20 special conditions are necessary and justified in this case:

21 First, immediately following this sentencing, you  
22 shall be transported directly from the James T. Foley U.S.  
23 Courthouse in Albany, New York, to the McPike Addiction  
24 Treatment Center in Utica, New York, to participate in  
25 inpatient substance abuse and/or mental health treatment at

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1 the facility. You must abide by all of the rules of the  
2 McPike program, which may include a medication regime. You  
3 shall contribute to the cost of any evaluation and/or  
4 treatment in an amount to be determined by the treatment  
5 provider.

6           You shall participate in a mental health program,  
7 which may include medical, psychological or psychiatric  
8 evaluation and outpatient treatment as recommended by the  
9 treatment provider based upon your risk and needs. You may  
10 also be required to participate in inpatient treatment upon  
11 recommendation of the treatment provider and upon approval  
12 of the Court. The Probation Office must approve the  
13 location, frequency and duration of outpatient treatment.  
14 You shall abide by the rules of the program, which may  
15 include a medication regime. You shall contribute to the  
16 cost of any evaluation and/or treatment in an amount to be  
17 determined by the Probation Officer based on your ability to  
18 pay and the availability of third-party payments.

19           You shall participate in a program for substance  
20 abuse, which shall include testing for the use of controlled  
21 substances, controlled substance many analogues and alcohol.  
22 This may include outpatient treatment as recommended by the  
23 treatment provider based upon your risk and needs. You may  
24 also be required to participate in inpatient treatment upon  
25 recommendation of the treatment provider and upon approval

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1 of the Court. The Probation Office shall approve the  
2 location, frequency and duration of outpatient treatment.  
3 You shall abide by the rules of any treatment program, which  
4 may include abstaining from the use of alcohol. You shall  
5 contribute to the cost of any evaluation and/or treatment in  
6 an amount to be determined by the Probation Officer based on  
7 your ability to pay and the availability of third-party  
8 payments.

9           You shall refrain from the use of alcohol and be  
10 subject to alcohol testing and treatment.

11           I find that based on your financial resources and  
12 projected earnings, you do not have the ability to pay a  
13 fine.

14           You must pay to the Clerk of the Court, however, a  
15 special assessment of \$100, which is due and payable  
16 immediately.

17           Both parties have the right to appeal this  
18 sentence. You are advised to consult with your attorney to  
19 determine whether or not an appeal is warranted. Any appeal  
20 must be filed within 14 days of the date the judgment is  
21 filed in this case.

22           I note, however, that this case is subject to a  
23 binding plea agreement. Within his plea agreement, the  
24 defendant waives the right to appeal any sentence consistent  
25 with the agreed-upon disposition or a less severe sentence.

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1           At this time, does the Government move to dismiss  
2 Counts I and II of the indictment?

3           MR. GROGAN: Yes, your Honor.

4           THE COURT: Okay, those counts are dismissed. Is  
5 there anything further from the Government?

6           MR. GROGAN: No, your Honor.

7           THE COURT: Anything further from the defense?

8           MR. HERNANDEZ: No, your Honor.

9           THE COURT: Mr. Seifert, I wish you well at  
10 McPike.

11          THE DEFENDANT: Thank you.

12          THE COURT: I hope that things go well for you  
13 there. I commend your attorney and the Assistant United  
14 States Attorney and Mr. Cox at Probation, everybody has  
15 worked very, very hard to try to get the proper placement  
16 for you. I hope you take advantage of it and that you get  
17 the assistance that you need.

18          THE DEFENDANT: Okay.

19          THE COURT: Court stands adjourned. Defendant is  
20 remanded accordingly.

21                               (This matter adjourned at 10:11 AM.)

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1 CERTIFICATION OF OFFICIAL REPORTER  
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4 I, THERESA J. CASAL, RPR, CRR, CSR, Official  
5 Realtime Court Reporter, in and for the United States  
6 District Court for the Northern District of New York, do  
7 hereby certify that pursuant to Section 753, Title 28,  
8 United States Code, that the foregoing is a true and correct  
9 transcript of the stenographically reported proceedings held  
10 in the above-entitled matter and that the transcript page  
11 format is in conformance with the regulations of the  
12 Judicial Conference of the United States.

13  
14 Dated this 7th day of December, 2017.

15  
16 /s/ THERESA J. CASAL

17 THERESA J. CASAL, RPR, CRR, CSR

18 FEDERAL OFFICIAL COURT REPORTER  
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**THERESA J. CASAL, RPR, CRR**  
**UNITED STATES DISTRICT COURT - NDNY**